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FLOODPLAIN MANAGEMENT SECTION

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HOUSE BILL NO. 594

A bill amended by the Montana Legislature effective October 1, 1985, will affect state and local floodplain managers. This legislation requires written notice of entry before state or local floodplain officials can go on private land. We have printed the bill for your information; the amendments are indicated by underlining.

CHAPTER NO. 382 MONTANA SESSION LAW 1985 HOUSE BILL NO. 594

AN ACT REQUIRING NOTICE OF ENTRY ONTO LAND BY APPROPRIATE STATE AND LOCAL PERSONNEL FOR CERTAIN FLOODPLAIN AND FLOODWAY MANAGEMENT PURPOSES; REQUIRING RELEASE UPON REQUEST OF NAMES AND ADDRESSES OF ALL PERSONS OR ANY POLITICAL SUBDIVISION REQUESTING INVESTIGATION OF A NATURAL OR ARTIFICIAL OBSTRUCTION OR NONCONFORMING USE; AMENDING SECTION 76-5-105, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-5-105, MCA, is amended to read: *

"76-5-105. Authority to enter and investigate lands or waters. (1) The department or the responsible political subdivision may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by parts 1 through 4 of this chapter. Unless written consent is obtained, however, the department or the responsible political subdivision shall provide written notice of its entry by personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the department or the responsible political subdivision shall affix a copy of the notice to one or more conspicuous places on the property.

(2) An investigation of a natural or artificial obstruction or nonconforming use shall be made by the department or the responsible political subdivision either on its own initiative, on the written request of three titleholders of land abutting the watercourse or drainway involved, or on the written request of a political subdivision. Upon the request of an owner, owner's agent, lessee, or lessee's agent whose lands will be entered to undertake the investigation, the department or the responsible political subdivision shall release the names and addresses of the persons or political subdivision requesting the investigation."

Section 2. Extension of authority. Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

AMENDING FLOOD INSURANCE MAPS

As a floodplain administrator you may have demands from individuals to "take my property out of the floodplain." It may be possible to remove the floodplain designation, but the burden of changing a designation is placed on the property owner. The first step is to make a request to the Federal Emergency Management Agency (FEMA) for a "Letter of Map Amendment." Technical or scientific data must be presented to obtain an Amendment. The letter will waive the federal government's flood insurance purchase requirement. However, property owners must still comply with local floodplain regulations.

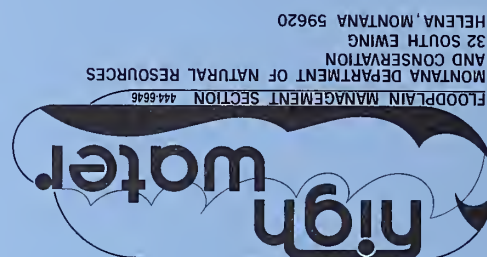
When Can a Map Amendment Be Obtained?

Generally, there are two circumstances under which to appeal for a Letter of Map Amendment (LOMA).

- 1) A certain property located above the base flood elevation may have been incorrectly included within the boundaries of the 100-year floodplain. The ini-

tial step is to request a LOMA from FEMA. The LOMA will waive flood insurance requirements when the property is naturally above the floodplain. Once a LOMA is received, a request must be made to the Department of Natural Resources and Conservation to have the property removed from the designated floodplain. The state law requires that the Board of Natural Resources and Conservation designate floodplains and floodways. Likewise, the Board must take action to alter designations, or remove the floodplain designation.

- 2) A request for a Letter of Map Amendment may also be submitted when a **structure** is located in the floodplain but was elevated above the flood-prone area to comply with local floodplain management standards. A LOMA waives further flood insurance purchase requirements and the property owner may be eligible for a refund. However, the Amendment does not relieve the property owner of complying with local floodplain regulations for any subsequent construction or improvements.



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When is a Request Unacceptable?

Developers who want to fill in an undeveloped flood-prone area with the intent of removing the area from the floodplain designation won't be granted an Amendment. Any such filling in the floodplain requires a permit and must not obstruct the flow of floodwaters. The Board of Natural Resources and Conservation has determined that the law allows for placing fill in the floodplain subject to the permit requirements; however, an individual cannot "build" property out of the floodplain. Any construction taking place on such filled areas is subject to floodplain regulations.

What Data is Required?

The following technical or scientific data must be submitted along with the application:

- 1) A copy of the recorded deed indicating the legal description of the property and the official recordation (deed book volume and page number) with the seal of the County Clerk and Recorder.
- 2) A copy of the recorded plat (if the property is recorded on a plat map), indicating both the location of the property and the official recordation (plat book volume and page number) with the seal of the recorder. If the property is not recorded on a plat map, copies of the tax map or other suitable maps are required.
- 3) A topographic map, certified by a registered professional engineer or licensed land surveyor, structure locations, ground elevations, and the elevations of both the lowest finished grade adjacent to the structure and the lowest floor (including basement). If there is no basement, it should be stated. In cases of new construction, a clear distinction must be made between existing and proposed elevations; after completion, all finished grades and elevations must be certified as built.
- 4) Data to substantiate the Base Flood Elevation from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, U.S. Soil Conservation Service, any other federal agency, state and local agency, a FEMA flood insurance study or technical data prepared by a registered engineer.
- 5) A signed copy of the statement asserting the accuracy of the information submitted (form entitled "Request for Letter of Map Amendment" available from FEMA or Montana DNRC Floodplain Management Section).
- 6) Additional data may be required by FEMA in some cases.

What About Floodways?

The federal requirement for flood insurance won't be waived if a structure is in an officially designated or anticipated floodway. Property owners who have technical data proving the property is naturally above the 100-year floodplain may request a Map Amendment.

Are Levees Considered for Amendments?

An Amendment will be issued for structures protected by levees if it's demonstrated that the levee meets FEMA criteria. FEMA's criteria follow the guidelines in the Army Corps of Engineers manual, *Design and Construction of Levees* March 31, 1978.

Where to Get More Information

A description of this process is contained in Part 70 of the National Flood Insurance Program regulations, 44 CFR 59 et seq.

Where to Send the Request for a Letter of Map Amendment

Requests regarding more than one building on a lot or more than one lot may be sent to:
Federal Emergency Management Agency
Federal Insurance Administration
Office of Risk Assessment
500 C Street, SW
Washington, DC 20472

Requests for single lots or single structures should be sent to:
Director, Natural and Technological Hazards
Federal Emergency Management Agency
Region VIII
Box 25267, Denver Federal Center
Denver, CO 80225-0267

1985 FLOODPLAIN MANAGEMENT BIBLIOGRAPHY

We have updated our *Bibliography of Literature Related to Floodplain Management in Montana*. It will be distributed to all local floodplain administrators. The bibliography will be useful to individuals seeking publications discussing floodplain laws, legal issues, and interpretations. It contains current information on structural and non-structural flood damage reduction. Various aspects of floodplain management are covered, including land use regulations; land acquisition; engineering, hydraulic and hydrologic studies; and flood proofing. Flood studies for areas around Montana are listed along with appropriate case studies from outside the state.

KEEP THE HIGH WATER GOING? YES!

The results are in on our March "Keep the High Water Going?" survey. We heard from forty floodplain managers and other public officials. Thirty-nine were in favor of continued publication. Most floodplain managers used the High Water to answer inquiries regarding floodplain management or flood insurance, keep up with trends in floodplain management, and understand state and national flooding problems. Thirty-four of those who answered keep back copies on file.

We appreciate the constructive comments concerning the newsletter. We also enjoyed the praise from one respondent who said, "I find the High Water to be a most useful and practical publication for the practicing floodplain manager—concise, timely, and well written." We'll try to continue making High Water work for you.